

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5785 of 1996

with

SPECIAL CIVIL APPLICATION No 5786 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 : No

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DALWADI PARSHOTTAMBHAI MADHABHAI

Versus

GOVERNMENT OF GUJARAT

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Appearance:

1. Special Civil Application No. 5785 of 1996  
MR JD AJMERA for Petitioners  
MR SP DAVE, AGP for Respondent No.1 & 2  
SERVED for Respondent No. 3
2. Special Civil ApplicationNo 5786 of 1996  
MR JD AJMERA for Petitioner  
MR TH SOMPURA, AGP for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 06/02/97

COMMON ORAL JUDGEMENT

Present orders shall govern the disposal of these two petitions arising under Article 226 of the Constitution of India and presenting common questions of law and facts.

Special Civil Application No. 5785 of 1996 has been filed by two petitioners. The respondent no.3 has also a common interest in the proceedings, but as he could not be joined as the petitioner, he has been joined in the capacity of respondent no.3.

Certain lands situated at village Charavada under the Halvad Taluka of Surendranagar District were put on auction. This was so necessitated because of the fact that, certain lands were ear-marked for a scheme known as "Work for Food". This scheme had not progressed and, ultimately, it was decided to dispose of the lands under the provisions contained in the Bombay Land Revenue Code, 1879. The necessary advertisement was given and the publicity at the beat of the drum was also made. Ultimately, under the Rojkam dated January 6, 1994, the two petitioners and the respondent no.3 were given the lands in question under the auction as the highest bidders. This sale made in favour of the petitioners and the respondent no.3 were required to be confirmed by the Collector. Any how, the Collector, Surendranagar, under the orders dated June 8, 1994, available at Annexure.C, had come to the conclusion that the entire proceedings were conducted in an arbitrary manner and, therefore, the whole sale proceedings were required to be quashed and set aside. Accordingly, the entire sale proceedings came to be quashed and set aside. This order, at Annexure.C, dated June 8, 1994, came to be challenged, of course, unsuccessfully, before the Deputy Secretary (Appeals), Department of Revenue, State of Gujarat, Ahmedabad. The said orders dated May 11, 1995 are in challenge in this petition.

Special Civil Application No. 5786 has been filed by a sole petitioner-Pathubhai Rajput. The only fact change would be that, he was given the land bearing Survey No. 371 situated at village Merupar, admeasuring about 15 acres 0 gunthas. When the abovesaid sale proceedings were forwarded before the Collector, Surendranagar, for confirmation, a view was taken by the said authority that, before making of the sale under the public auction in favour of the petitioner, the necessary

inquiry was not made in respect of the holding of the petitioner-purchaser. It is pointed out by the Collector, Surendranagar that, in the same way, after completion of the sale proceedings what would be the total holding of the petitioner is also not taken into consideration. It is broadly on these grounds that, under the orders dated December 8, 1994, the Collector, Surendranagar was pleased to set aside the sale proceedings in favour of the petitioner. In this case also, the matter was taken to the Deputy Secretary (Appeals), Department of Revenue, State of Gujarat, Ahmedabad, unsuccessfully, because the revision application to be filed by the petitioner came to be dismissed under the orders dated April 30, 1996. These orders are in challenge in the petition.

Learned Counsel Mr.J.D.Ajmera who appears on behalf of the petitioners in both the petitions urges that, regard being had to the provisions contained under Section 178 of the Bombay Land Revenue Code, 1879, the sale could not have been confirmed and could have been set aside on the ground of some material irregularity or mistake or fraud in publishing or conducting the sale. But, when the Collector, Surendranagar has not said anything regarding this aspect of the matter and the sales have been set aside on other extraneous considerations which would not fall within the purview of the provisions contained under Section 178 of the Act of 1879.

When the orders passed by the Collector, Surendranagar are perused, it is apparently eloquent that the learned Counsel is perfectly justified in voicing the above said grievance. In Special Civil Application No. 5785 of 1996, the Collector, Surendranagar, while setting aside the sale by the orders dated June 1989 has simply stated that the auction proceedings were held and completed in an arbitrary fashion. So far as the Special Civil Application No. 5786 of 1996 is concerned, the Collector, Surendranagar, while setting aside the sale in favour of the petitioner, has assigned two reasons. Firstly, he has stated that the petitioner had not furnished the particulars regarding his other holdings and in the same way, the authority conducting the sale, has not examined the question as to what would be the total holding of the petitioner provided he is successful in getting the land in question under the auction. It appears that, even in this respect also, the Collector, Surendranagar was not justified because, in fact, the petitioner had presented the complete details regarding his other holdings by presenting the village Form No.8-A

before the authority who had conducted the sale.

Any how, it shall have to be appreciated that, in none of the two orders, the Collector, Surendranagar was able to say that there was some material irregularity or mistake or fraud in publishing or conducting the sale. Therefore, it is clear that the said authority had mis-directed himself while examining the questions of setting aside the sale or confirming the same.

Because of this position, in my opinion, these two petitions require a partial recognition and the matters require to be re-transmitted to the Collector, Surendranagar for holding the proceedings strictly in conformity with the provisions contained under Section 178 of the Code of 1879. In other words, the questions to be examined by the Collector, Surendranagar would be as to whether he is required to confirm or set aside the sale on the ground of some material irregularity, mistake or fraud in publishing or conducting the sale. The whole exercise to be done by the Collector, Surendranagar should be limited to the above said questions only. I, therefore, order accordingly.

In the result, these two petitions stand allowed in part. The impugned orders stand quashed and set aside and the matters stand remanded to the Collector, Surendranagar for deciding the same after affording a reasonable opportunity of being heard to the petitioners. This exercise must be within the framework of Section 178 of the Code of 1879 as indicated by me earlier. This should be done as early as possible and within a period of three months from the date of receipt of the writ of the present orders, by the said authority. Rule is made absolute to the above said extent in each of the two petitions, with no order as to costs.

Needless it is to clarify, upon a request coming from learned Counsel Mr. Ajmera that, the orders of the Collector as well as the orders of the State Government confirming the said orders by the State, shall stand quashed and set aside, by the present orders.

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